

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

In re: Webb Environmental Associates, Ltd. Petition No. 2000-0623-053-036

MEMORANDUM OF DECISION

Procedural Background

On April 18, 2001, the Department of Public Health ("the Department") issued a Statement of Charges against Webb Environmental Associates, Ltd. ("respondent"), due to its alleged violations of the Connecticut General Statutes and the Regulations of Connecticut State Agencies ("the Regulations") as described more particularly below. H.O. Exh. 1.

On April 25, 2001, a Notice of Hearing was provided to respondent by both First Class and certified mail, return receipt requested. In the Notice of Hearing, Elisabeth Borrino, the undersigned, was appointed by the Commissioner of the Department to be the Hearing Officer and to rule on all motions, and to determine findings of fact and conclusions of law and issue an Order. H.O. Exh. 1.

On July 3, 2001, the Department filed a Motion to Deem Allegations Admitted for failure to file an Answer to the Charges. H.O. Exh. 2. On July 5, 2001, the Hearing Officer ordered respondent to file an Answer on or before July 12, 2001, or the Department's Motion would be granted. H.O. Exh. 3. No Answer was received from respondent. Accordingly, on July 13, 2001, the Hearing Officer granted the Department's Motion. H.O. Exh. 4.

The administrative hearing was held on July 17, 2001, in accordance with Connecticut General Statutes Chapter 54 and Regulations §§19a-9-1 *et seq.* Respondent appeared through its Chief Executive Officer, M. Gregory L. Webb, *pro se*; Attorney Linda Fazzina, Esq., represented the Department.

This Final Decision is based entirely on the record and sets forth this Hearing Officer's findings of fact, conclusions of law, and Order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn 1985).

Allegations

FIRST COUNT

1. In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos contractor license number 000270.
2. In paragraph 2 of the Charges, the Department alleges that in or about summer of 1999, respondent performed an asbestos abatement project at 634 Howard Avenue, New Haven, CT ("the New Haven property").
3. In paragraph 3 of the Charges, the Department alleges that on or about August 31, 1999, in connection with the asbestos abatement project at the New Haven property, respondent violated Connecticut's standards applicable to the performance of asbestos abatement, which standards are contained in §§19a-332a-1 to 19a-332a-16, inclusive, of the Regulations¹ when respondent
 - a. failed to cover all floor and/or wall surfaces in the work area(s) with a minimum of two (2) layers of four (4) mil polyethylene sheeting or the equivalent;
 - b. failed to isolate the work area(s) from the non-work area(s) with airtight barriers attached securely in place;
 - c. failed to construct, operate and/or maintain a worker decontamination system;
 - d. failed to clean one or more contaminated objects prior to removing such object(s) from the work area(s);
 - e. failed to adequately wet all asbestos containing materials to be removed or disturbed by removal; and/or,

¹ The Regulations were amended on or about June 4, 1999. Unless otherwise noted, all references contained herein are to the Regulations in effect after June 4, 1999.

- f. failed to provide negative pressure ventilation units with high efficiency particulate air ("HEPA") filtration in sufficient number to allow at least one air change every fifteen minutes in each work area.
- 4. In paragraph 4 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to Connecticut General Statutes §§ 20-440 and/or 19a-332a(b), taken in conjunction with Regulations §§ 19a-332a-1, 19a-332a-2, 19a-332a-5(c), 19a-332a-5(d), 19a-332a-5(e), 19a-332a-5(h), 19a-332a-6, 19a-332a-7(a), 19a-332a-7(d), 20-440-1 and/or 20-440-6(b) of the Regulations.

COUNT TWO

- 5. In paragraph 5 of the Charges, the Department realleges the allegations contained in paragraph 1.
- 6. In paragraph 6 of the Charges, the Department alleges that in or about the summer of 1999, respondent performed an asbestos abatement project at Copaco Plaza, Cottage Grove Road, Bloomfield, CT ("the Bloomfield property").
- 7. In paragraph 7 of the Charges, the Department alleges that on or about August 2, 1999, in connection with the asbestos abatement project at the Bloomfield property, respondent violated Connecticut's standards applicable to the performance of asbestos abatement, as set forth in §§ 19a-332a-1 to 19a-332a-16, inclusive, of the Regulations of the Connecticut State Agencies ("the Regulations") when respondent
 - a. failed to ensure that all asbestos containing waste was adequately wetted and placed in leak-tight containers for disposal;
 - b. failed to properly label all containers holding asbestos containing waste;
 - c. failed to seal airtight all openings between the work area(s) and the non-work area(s);
 - d. failed to cover all floor and/or wall surfaces in the work area with a minimum of two (2) layers of four (4) mil polyethylene sheeting or the equivalent; and/or,

- e. failed to ensure that no person leave a work area unless first decontaminated by showering, wet washing or HEPA vacuuming to remove all asbestos debris.
8. In paragraph 8 of the Charges, the Department alleges that on or about August 11, 1999, in connection with the asbestos abatement project at the Bloomfield property, respondent violated Connecticut's standards applicable to the performance of asbestos abatement, as set forth in §§19a-332a-1 to 19a-332a-16, inclusive, of the Regulations of the Connecticut State Agencies ("the Regulations") when respondent
- a. failed to ensure that no person leave a work area unless first decontaminated by showering, wet washing or HEPA vacuuming to remove all asbestos debris; and/or,
 - b. failed to ensure that each of the asbestos abatement workers and/or asbestos abatement site supervisors working for respondent at the site had their initial and most recent documents of accreditation.
9. In paragraph 9 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to Connecticut General Statutes §§ 20-440 and/or 19a-332a(b), taken in conjunction with Regulations §§19a-332a-1, 19a-332a-2, 19a-332a-5(c), 19a-332a-5(e), 19a-332a-5(j), 19a-332a-5(k), 19a-332a-6(b), 20-440-1 and/or 20-440-6(b) of the Regulations.

THIRD COUNT

10. In paragraph 10 of the Charges, the Department realleges the allegations contained in paragraph 1.
11. In paragraph 11 of the Charges, the Department alleges that on or about December 28, 1999, the Department accepted a Consent Order in Petition Numbers 990527-053-009 and 990913-053-017 ("the Order"). Said Order required that respondent pay a civil penalty of fourteen thousand dollars in installments, in accordance with a schedule of payment specified in the Order. The Department further alleges that respondent failed to make any of the requisite payments, except for the initial installment of one thousand dollars.
12. In paragraph 12 of the Charges, the Department alleges that that Order also provided that respondent's license shall be placed on probation until respondent completed five interior asbestos abatement projects in accordance

with monitoring and reporting requirements specified in the Order. Said requirements include, without limitation, that respondent cause the monitor to prepare and submit directly to the Department, a written report setting forth his or her findings regarding each project and that said reports include the documentation and information specified in the Order. The Department further alleges that as of April 18, 2001, respondent filed asbestos abatement notification forms with the Department for more than five interior asbestos abatement projects. Based on the information contained in said notification forms, the Department believes that respondent has completed at least five interior asbestos abatement projects as April 18, 2001. The Department further alleges that it has not received any project monitoring reports from respondent.

13. In paragraph 13 of the Charges, the Department alleges that respondent violated the terms of probation as set forth in the Order, and subjects respondent's license to revocation or other disciplinary action authorized by Connecticut General Statutes §§19a-14(c), 19a-17 and Chapter 400a, taken in conjunction with §20-440-6(b) of the Regulations.

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos contractor license number 000270.
2. The Department provided respondent with reasonable and adequate written notice of (a) the allegations contained in the Charges, (b) the Notice of Hearing, and (c) the requirement that it file an Answer within fourteen days of the Notice of Hearing. H.O. Exhs. 1, 3.
3. Respondent received the Department's Motion to Deem Allegations Admitted and the Hearing Officer's ruling thereon. Respondent did not oppose the Motion because the statements contained in the Charges are true. Tr. 6.
4. Respondent was adequately informed that the Department's Motion to Deem Allegations Admitted would be granted if it failed to timely file an Answer. Respondent fully understood this information. H.O. Exhs. 3, 4.
5. Respondent did not (a) file an Answer within fourteen days of the Notice of Hearing, or (b) comply with the Hearing Officer's July 5, 2001 Order.
6. No evidentiary hearing regarding the allegations of the Complaint was held in this matter.

7. The allegations contained in paragraphs 1, 2, 3, 5, 6, 7, 8, 10, 11, and 12, inclusive, of the Charges, as set forth above, are deemed admitted and true. H.O. Exhs. 1, 3, 4.
8. M. Gregory L. Webb, respondent's Chief Executive Officer, is not a credible witness.

Discussion and Conclusions of Law

Section 20-440-6(b) of the Regulations provides in relevant part as follows:

Following notice and a hearing . . . the department may take any action permitted by sections 19a-17 and 19a-332e of the Connecticut General Statutes, against any person issued a license or certificate under sections 20-440-1 through 20-440-9 of the Regulations of Connecticut State Agencies for conduct including but not limited to:

- (1) Violation of the provisions of section 20-440-1 through 20-440-9 of the Regulations of Connecticut State Agencies;
- (2) violation of any other regulations and statutes governing asbestos abatement or licensure;
- (3) violation of the standard of care of the profession;
- (4) negligence in performing activities that require licensure or certification;
- (5) aiding or abetting persons who engage in activities that require licensure or certification, but are not licensed or certified; and,
- (6) fraud and deceit in the course of professional services or activities.

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (1981); *Swiller v. Comm'r of Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995. The Department's Motion to Deem Allegations Admitted was granted in its entirety, and thereby, the Department met its burden of proof regarding the factual allegations.

Based on the foregoing Findings of Fact, respondent violated Regulations §§19a-332a-2; 19a-332a-5(c), 19a-332a-5(d), 19a-332a-5(e), 19a-332a-5(h), 19a-332a-7(a), 19a-332a-7(d); 19a-332a-5(j), 19a-332a-5(k), and 20-440-5(a), inclusive, of the Regulations that respondent violated §§19a-332a-2; 19a-332a-5(c), 19a-332a-

5(d), 19a-332a-5(e), 19a-332a-5(h), 19a-332a-7(a), 19a-332a-7(d); 19a-332a-5(j), 19a-332a-5(k), and 20-440-5(a) of the Regulations.

The only remaining issue is whether respondent's license should be disciplined. Respondent claims that no discipline should be imposed, contending that the only reason it has not complied with the terms of the Consent Order was due to a lack of financial resources. The record, however, establishes that respondent has been actively engaged in asbestos abatement and demolition. Tr. 27; Dept. Exh. 1. Nonetheless, either respondent is correct and is so financially depleted that it is not able to pay either its project monitor or the Department, or respondent is fabricating excuses for its failure to comply with the Consent Order. Neither scenario excuses respondent's failure to comply with the Consent Order and the Regulations especially when respondent is continuing to perform asbestos abatement in a manner that is potentially injurious to the public health.

Respondent asserts that, despite its financial depletion and multiple regulatory violations, it should still be permitted to perform abatement projects claiming that it is desirous of paying the Department and its project monitor percentages of the profits until paid in full. Respondent also represents that it is subject to massive tax and bond liens. Moreover, according to the files of the State of Connecticut Judicial Branch, respondent is the defendant in at least fifteen pending cases throughout the state.² Respondent disingenuously claimed that no such litigation was filed or pending.³

The Department contends that it is "not confident that this contractor can continue to operate in a safe and effective manner as a contractor" and requests that

² On July 18, 2001, the Hearing Officer issued Notice of her intent to take administrative notice of the files of the State of Connecticut Judicial branch and that such list would be incorporated into the record as Hearing Officer Exhibit No. 5. H.O. Exh. 6. No objection was received.

³ The following colloquy occurred between Mr. Webb and the Hearing Officer:

Hearing Officer: Do you have any lawsuits pending against your company, Mr. Webb?

Mr. Webb: No.

Hearing Officer: Do you have any lawsuits pending against you personally as regards any aspect of these services that the company performs?

Mr. Webb: No, never. Never had a lawsuit for abatement, never. Tr. 58.

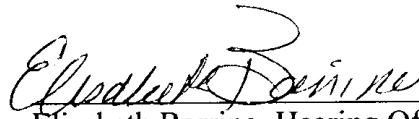
respondent's license be revoked. Tr. 52. The Hearing Officer agrees. The uncontroverted record establishes that respondent is either resistive to or incapable of complying with the Regulations and the terms of the Consent Order thereby placing the public at risk

Order

In addition to paying the \$13,000.00 that remains due and payable as ordered in the Consent Order on Petition Nos. 990527-053-009 and 990913-053-017, pursuant to Connecticut General Statutes §§19a-17 and 20-440, this Hearing Officer further orders the following against the license of Webb Environmental Associates, Ltd., license no. 000270 in Petition No.2000-0623-053-036:

1. Respondent's asbestos contractor's license number 000270 to perform asbestos abatement in the State of Connecticut is hereby revoked.

09-06-01
Date


Elisabeth Borrino, Hearing Officer
Department of Public Health